In the High Court of Judicature for Rajasthan
Jaipur Bench
**
Cr. Msc. Petition No.2180/2007
Jitendra Kumar ***Versus*** State

**Date of Order ::: 12/12/07**

***Hon'ble Mr. Justice Ajay Rastogi***

Mr. Anil Jain for Mr. JR Choudhary, for petitioner
Mr. Arun Sharma, Public Prosecutor

Instant petition U/s 482, CrPC has been filed by accused against order dt.06/10/07 whereby Addl. Chief Judl. Mag. Tonk rejected application U/s 70(2) CrPC for converting non-bailable warrant into bailable in Cr.Case No.618/03.

Petitioner is charged with offence of U/s 19/54 of Rajasthan Excise Act & 188 IPC. Initially, challan was filed against Ramesh Chand who was salesman and later on application was filed to take cognizance against licensee (viz. Petitioner). Taking note of submissions made by Public Prosecutor and material on record, learned trial Magistrate took cognizance of offences (supra) vide order dt. 03/03/2000 against petitioner who surrendered and was released on bail bonds on 30/04/2001.

It appears from the record that since he failed to appear on 25/11/04, his bail bonds were forfeited and his arrest warrant was issued. So far

as other co-accused are concerned, they surrendered and on fresh bail bonds were released. Since petitioner was residing in Punjab, was not aware of the proceedings U/s 82/83 CrPC being initiated and standing warrant of arrest has been issued, as well at this stage, he filed application for converting arrest warrant into bailable warrant, which was rejected by learned trial Court vide order impugned.

In **State of UP Vs Poosu (1976(3) SCR 1005** referred to in **Indermohan Vs. State UC** (**JT 2007(11) SC 499=(2007(V) AD (Cr)(SC) 369),** Apex Court observed ad infra:

> **".. Broadly speaking,** the court would take into account the various factors **such as the nature and seriousness of the offence, the character of the evidence, circumstances peculiar to the accused, possibility of his absconding, larger interest of the public and the State."**

In **Indermohan Vs. State of UC** (supra), it has been held that non-bailable warrant should be issued to bring a person to court when summons of bailable warrants would be unlikely to have the desired result. Apex Court also observed ad infra:

> **"56... There cannot be any straight jacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an**

> **offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided."**

In the facts of instant case, summoning him through non-bailable warrant in view of the nature of offence is not justified and to this extent, this order impugned requires interference in inherent jurisdiction U/s 482, CrPC.

Consequently, misc. petition is partly allowed alongwith stay petition; and the order dt.06/10/07 impugned stands modified and summoning petitioner through non-bailable warrant stands converted into bailable warrants provided petitioner (Jitendra Kumar) appears on or before 21/01/08 before the learned trial Court, in criminal case arising out of FIR-11/95 PS Piplu (Tonk) and shall furnish bail bonds as the trial Court may deem proper; and on failure to appear as directed (supra), the trial Court will be free to proceed further for procuring their attendance in accordance with law.

(**Ajay Rastogi), J.**